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7 GOLDEN AGE HOME CARE, INC.
8 & ROBERT PARKENS
9

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION - LOS ANGELES**
12

13 TRANSAMERICA LIFE INSURANCE
14 COMPANY,

15 Plaintiff,

16 vs.

17 VLADIMIR LUKASHIN; OKSANA
18 FAERMAN; GOLDEN AGE HOME CARE
19 INC. and ROBERT PARKENS

20 Defendants.
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Case No. 2:19-cv-00662-SVW-JPR

*[Assigned to:
Hon. STEPHEN V. WILSON &
Hon. JEAN P. ROSENBLUTH (Magistrate
Judge)]*

**DECLARATION OF YURI VORONIN,
COUNSEL FOR DEFENDANTS
GOLDEN AGE HOME CARE, INC. &
ROBERT PARKENS WITH RESPECT
TO DEFENDANT VLADIMIR
LUKASHIN'S EX PARTE
APPLICATION TO CONTINUE TRIAL**

Complaint filed: January 29, 2019

Trial Date: January 21, 2020

1 I, YURI VORONIN, declare and say as follows:
2

3 1. I am an attorney at law licensed to practice before all the courts of
4 the State of California, and am the attorney of record for Defendants GOLDEN
5 AGE HOME CARE INC. and ROBERT PARKENS. The following is based upon
6 my personal knowledge, information and belief, and if called upon to testify
7 thereto, I could and would do so competently.

8 2. This declaration is submitted in relation to Defendant Vladimir
9 Lukashin' Ex Parte Application to Continue Trial and Related Pre-Trial
10 Deadlines filed on November 15, 2019 (ECF No. 45). Specifically, there is a
11 dispute among the parties regarding whether, or not, the Court set a Discovery
12 Cutoff date at any time, and if so, whether the Discovery Cutoff Date was
13 extended/continued when the Court granted Plaintiff Transamerica Life
14 Insurance's Motion to Continue Trial by Order entered August 26, 2019 (ECF
15 No. 40).

16 3. Defendants Golden Age and Parkens position with respect to
17 Discovery is the discovery cutoff date has passed, and based thereon, absent a
18 Motion to Extend Discovery, no further discovery is warranted.

19 4. Specifically, at the Initial Status Conference on April 10, 2019, the
20 Court orally set a Discovery Cutoff date of August 26, 2019, and such
21 Discovery Cutoff Date is reflected in the Reporter's Transcript of Proceedings. A
22 true and exact copy of the Reporter's Transcript of Proceedings is attached
23 hereto, marked Exhibit "1" and incorporated herein by reference as though
24 fully set forth. *[Highlighting added on page 21 of the Transcript]*
25
26
27
28

1 In relevant part:

2
3 **“THE COURT:** And either side can make a dispositive motion at any
4 time they deem appropriate. **The discovery cutoff will be at the end of**
5 **August.**

6 THE CLERK: **That will be August 26, 2019.**

7 **THE COURT: All right.** Thank you. Thank you.

8 THE CLERK: All rise. Court is now adjourned.”

9 [See Exhibit “1” - Reporter’s Transcript of Proceedings at Page 21, Lines 13-16].
10

11
12 5. Transamerica acknowledged and confirmed the existence of the
13 August 26, 2019 Discovery Cutoff Date by referencing the Discovery Cutoff
14 Date in its prior Ex Parte Motion to Continue Trial (ECF No. 39 at page 7, Line
15 17, and page 11, Line 19), as well as the supporting Declaration of Katharine
16 Mooney (ECF No. 39-1 at page 4, Line 1).

17 6. However, contrary to its own prior acknowledgment and
18 admissions regarding the existence of the Discovery Cutoff Date, Transamerica
19 *now* takes the contrary position, specifically, alleging that the Court never set a
20 Discovery Cutoff Date to begin with. Such position is factually inaccurate, as
21 set forth in the Reporter’s Transcript of Proceedings (April 10, 2019 – Exhibit
22 1), and otherwise contrary to Transamerica’s Ex Parte Motion to Continue Trial
23 (ECF No. 39 at page 7, Line 17 and page 11, Line 19), as well as the supporting
24 Declaration of Katharine Mooney (ECF No. 39-1 at page 4, Line 1).

25 7. The fact that the Court revised Movant Transamerica’s [proposed]
26 Order to Continue Trial (ECF No. 39-3), which included a proposed new
27 Discovery Deadline of December 24, 2019 (ECF No. 39 at page 2, Line 8)
28 further contradicts Transamerica’s present position that there was no

1 previously set Discovery Cutoff date. In fact, Transamerica's arguments on the
 2 issue defy logic and beg the question - *if there was no prior Discovery Cutoff*
 3 *date set by the Court, why would Transamerica request a new/continued*
 4 *Discovery Deadline?*

5 8. When the Court ultimately granted Transamerica's Motion to
 6 Continue Trial, the entered Order Continuing Trial (ECF No. 40) replaced the
 7 language proposed by Transamerica (Discovery Deadline of December 24, 2019
 8 [See ECF No. 39 at page 2, Line 8]) with - "Refer to Civil Trial Preparation
 9 Order (Dkt #34)" (ECF No. 40). Thus, based on the language of the entered
 10 Order to Continue Trial (ECF No. 40), as revised by the Court before entry
 11 thereof, no new Discovery Deadline/Cutoff was set, such that the original
 12 Discovery Cutoff Date of August 26, 2019, as set by the Court at the Initial
 13 Status Conference on April 10, 2019, remains in effect [See Exhibit "1" -
 14 Reporter's Transcript of Proceedings at Page 21, Lines 13-16]. Based thereon,
 15 Defendants Golden Age and Parkens' position on the issue of Discovery is that
 16 no further Discovery is to be had, absent an appropriate Motion and Order of
 17 the Court to Extend the Discovery Cutoff of August 26, 2019. In that
 18 connection, I so advised all counsel via e-mail on October 21, 2019 after
 19 learning of Transamerica's intent to set and proceed with Depositions of non-
 20 parties in November 2019, and parties in December 2019. The exact language
 21 of said e-mail is set forth below:
 22

23
 24 On Oct 21, 2019, at 5:49 PM, Yuri Voronin <yvoronin@lawyer.com> wrote:

25
 26 "Dear Counsel for All Parties and Parties in Interest:

27
 28 As you know, at the 4/12/19 Status Conference, among
 other things, the Court set a Discovery Deadline and

1 Dispositive Motion Cutoff of August 26, 2019. In that
 2 connection, when Transamerica filed its Motion to Continue
 3 Trial, the foregoing cutoff was referenced in attorney
 4 Katharine Mooney's supporting Declaration (Declaration of
 Katharine Mooney [Doc 39-1] at paragraph 13, pages 3-4).

5 In addition to seeking to continue the Trial Date, Plaintiff
 6 also sought a new Discovery cutoff date and referenced that
 7 all defendants were granted 30 day discovery response
 8 extensions. On that note, in Plaintiff's proposed Order (Doc
 9 39-3), in relevant part, Plaintiff included a new proposed
 10 Discovery Deadline/Cutoff of December 24, 2019; however,
 11 when the Court ultimately entered the Order continuing
 12 Trial on 8/26/19 [Doc 40], the Court made various
 13 revisions to Plaintiff's proposed Order, in relevant part,
 14 *completely removing the language regarding the proposed*
 15 *December 24, 2019 cutoff, replacing that language with:*
 16 *"Refer to Civil Trial Preparation Order (Dkt #34)"* however,
 the Civil Trial Preparation Order is silent as to a discovery
 cutoff - only discovery dispute procedures at page 4,
 paragraph D.1. are set forth, which Defendants Golden Age
 Home Care Inc. and Robert Parkens therefore interpret as a
 refusal by the Court to alter or extend the previously set
 Discovery Cutoff date of August 26, 2019 as announced by
 the Court on April 12, 2019.

17 PLEASE TAKE NOTICE that Defendants Golden Age Home
 18 Care Inc. and Robert Parkens interpretation of all the facts,
 19 based on documents filed with the Court, the Court's April
 20 12, 2019 scheduling of the August 26, 2019 discovery
 21 cutoff, and the Court's Order [Doc 40], is that the Court
 22 never extended the original discovery cutoff date, despite
 23 Plaintiff's request, specifically rejecting said request by
 24 revising the proposed Order previously lodged by Plaintiff
 25 with its Application to to continue Trial. With that said,
 26 Defendants Golden Age Home Care Inc. and Robert Parkens
 27 did however agree to an extension of the discovery cutoff
 28 date by 30 days based on Transamerica's granting of 30
 day extensions related to Discovery served on 5/24/19 and
 6/6/19, respectively, both of which were responded to on
 7/18/19 and 7/23/19 respectively. Thus, with a 30 day
 extension of the August 26, 2019 discovery cutoff by
 agreement, the discovery cutoff was extended to/through
 September 25, 2019. If there was a different agreement
 pertaining to Defendant Lukashin, neither I nor my clients

1 are aware of it, and is of no consequence to my clients in
2 any event.

3 Based on the foregoing, Defendants Golden Age Home Care
4 Inc. and Robert Parkens take the legal position that the
5 only appropriate discovery after September 25, 2019 is
6 related discovery propounded and responded to prior to
7 September 25, 2019, with the meet and confer process with
8 Plaintiff as to Defendants Golden Age Home Care Inc. and
9 Robert Parkens discovery responses served on Plaintiff on
10 7/18/19 and 7/23/19, respectively, having been completed
11 on 10/15/19. Defendants Golden Age Home Care Inc. and
12 Robert Parkens therefore object to any and all new
13 discovery after September 25, 2019, including Depositions
14 of any party or non-party, and written discovery of any
15 nature whatsoever. As such, Defendants Golden Age Home
16 Care Inc. and Robert Parkens shall not agree to be deposed,
17 and object to any pending depositions that have been
18 scheduled, if any, or are in the process of being scheduled,
19 by any party, and reserve the right to exclude/seek
20 exclusion of any such evidence at Trial.

21 Lastly, Defendants Golden Age Home Care Inc. and Robert
22 Parkens still have not been notified as to how/when
23 counsel for Defendant Lukashin intends to proceed given
24 the 10/16/19 filing of a Notice of Unavailability which
25 makes Defendant Lukashin's counsel unavailable for
26 anything after October 28, 2019, and, of particular
27 importance, the Final PreTrial Conference [1/13/2020],
28 Trial [1/21/2020], in addition to requisite conferences of
counsel to participate in and jointly prepare/submit pre-
Trial Stipulations and documents, and through the entire
month of February 2020. However, Defendants Golden Age
and Parkens take no position of Defendant Lukashin's
counsel's unavailability and are prepared to proceed with
Trial as scheduled, especially given the passing of the
discovery cutoff date. Thus, if or when counsel moves the
Court to continue Trial, Defendants Golden Age and
Parkens will at that time participate in any requisite meet
and confer on the subject.

26 Thank you.

27 Yuri Voronin, Esq.”
28

1 9. At no time, including the date of this Declaration, some 12 weeks
2 after entry of the Court's Order to Continue Trial (ECF No. 40), did Plaintiff
3 Transamerica move this Court to Clarify its Order entered on August 26, 2019,
4 which, on its face, did not set a new Discovery Cutoff Date.

5 10. There is no reason to believe that the Court acted capriciously in
6 refusing to extend the Discovery Cutoff Date beyond the original August 26,
7 2019 Cutoff date. The Court continued the Trial at Transamerica's request, for
8 a period of time that the Court deemed appropriate. However, Plaintiff
9 Transamerica is apparently unsatisfied with the relief actually granted it, and
10 now makes contradictory arguments on the issue of the Discovery Cutoff.

11 11. Nothing prevented Plaintiff Transamerica from completing all
12 Discovery prior to the August 26, 2019 Cutoff date. In that connection, Plaintiff
13 Transamerica did not set a single Deposition, or move the Court to Compel
14 Discovery, or further responses to Discovery prior to the Discovery Cutoff date.
15 In that regard, at least as to Defendants Golden Age and Parkens, Plaintiff
16 Transamerica was served with discovery their respective discovery responses
17 over a month before the Discovery Cutoff date (July 18, 2019 and July 23,
18 2019, respectively). On that note, Defendants GOLDEN AGE HOME CARE,
19 INC. and ROBERT PARKENS had agreed with Transamerica to consensually
20 extend the Discovery Cutoff date by 30 days based on Transamerica's having
21 granted a response deadline extension of 30 days to Transamerica's last round
22 of written Discovery. Thus, Defendants Golden Age and Parkens had consented
23 to continue to engage in Discovery through September 25, 2019 [30 days
24 beyond the August 26, 2019 Discovery Cutoff Date]. However, Plaintiff
25 Transamerica failed to engage in any further Discovery through the month of
26 September 2019, with the exception of sending its so called Deficiency Letter
27 on September 20, 2019 regarding Defendants Golden Age and Parkens
28

1 discovery responses served on Plaintiff Transamerica, at the latest, on July 23,
2 2019 – 59 days after being served with discovery responses.

3 12. Given the totality of the facts and circumstances, Plaintiff
4 Transamerica has not been nearly as diligent as it would have this Court
5 believe, and should not be bailed out for failing to act timely to complete
6 Discovery and/or to seek clarification from the Court regarding the Discovery
7 Cutoff issue. Thus, although continuing the Trial and Pre-Trial Conference
8 dates may be warranted based on attorney Julia Sklar's period of
9 unavailability, there should be no further discovery for any party, except for
10 pending law and Motion related to Discovery completed prior to the August 26,
11 2019 Discovery Cutoff date.

12 13. Lastly, in the event that the Court determines that discovery has
13 not been cut off, Defendants Golden Age and Parkens posit that all discovery,
14 of any nature or as to any party or non-party, should be stayed in its entirety
15 throughout the course of attorney Julia Sklar's period of unavailability for it is
16 fundamentally unfair for active litigation to proceed as to some defendants, and
17 not as to others – stated otherwise, the case should either be stayed as
18 requested by attorney Julia Sklar's, or not at all.

19
20
21 I declare under penalty of perjury under the Laws of the United States
22 that the foregoing is true and correct.

23 Executed this 18TH day of November 2019, at Los Angeles, California.

24
25
26 By: /s/ Yuri Voronin
27 Yuri Voronin - Declarant
28

DECLARATION OF YURI VORONIN

EXHIBIT 1

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

- - -
HONORABLE STEPHEN V. WILSON,
UNITED STATES DISTRICT JUDGE PRESIDING
- - -

TRANSAMERICA LIFE INSURANCE)
COMPANY,)
)
PLAINTIFF,)
)
VS.)
)
VLADIMIR LUKASHIN,)
)
DEFENDANT.)
-----)

08-1404 R

REPORTER'S TRANSCRIPT OF PROCEEDINGS
WEDNESDAY, APRIL 10, 2019
A.M. SESSION
LOS ANGELES, CALIFORNIA

SHERI S. KLEEGER, CSR 10340
FEDERAL OFFICIAL COURT REPORTER
312 NORTH SPRING STREET, ROOM 402
LOS ANGELES, CALIFORNIA 90012
PH: (213) 894-6604

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3 APPEARANCES OF COUNSEL:

4 ON BEHALF OF PLAINTIFF:

5 MICHAEL RAFALKO, ESQUIRE
6 KATHERINE MOONEY, ATTORNEY AT LAW

7 ON BEHALF OF DEFENDANT:

8 JULIA SKYLAR, ATTORNEY AT LAW
9 YURI VORONIN, ESQUIRE
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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, APRIL 10, 2019

2 A.M. SESSION

3 - - -

4
11:07:42 5 THE CLERK: Calling Item 1, CV-19-00662:
11:07:45 6 Transamerica Life Insurance Company versus Vladimir
7 Lukashin.

11:07:49 8 Counsel, please make your appearances.

11:07:51 9 MS. SKYLAR: Good morning, Your Honor.

11:07:52 10 Julia Skylar for the defendant Lukashin.

11:07:54 11 MR. VORONIN: Good morning, Your Honor.

11:07:59 12 Yuri Voronin for defendants Robert Parkens
11:08:02 13 and Golden Age Home Care.

11:08:04 14 MR. RAFALKO: Good morning, Your Honor.

11:08:04 15 Michael Rafalko on behalf of plaintiff
11:08:07 16 Transamerica. And I'm joined in the office today by my
11:08:11 17 colleague Katharine Mooney.

11:08:14 18 THE COURT: Can you hear me now,

11:08:15 19 Mr. Rafalko?

11:08:18 20 MR. RAFALKO: Yes, sir, I can very well.

11:08:21 21 THE COURT: Okay. Good. So this is a
11:08:22 22 status conference, and it's designed to give the Court
11:08:26 23 some understanding of the case beyond the pleadings. No
11:08:33 24 decisions of any consequence will be made at the status
11:08:39 25 conference. It's more informational and managerial.

11:08:47 1 So could you tell me, Mr. Rafalko, what your
11:08:51 2 evidence is at this point if the case were to be tried
11:08:58 3 now.

11:08:59 4 I understand the outline is that the
11:09:04 5 defendant made a claim. The company paid the claim, or
11:09:12 6 paid a substantial amount of money toward the claim, and
11:09:18 7 is now attempting to get back what it paid because it
11:09:26 8 claims that the defendant, along with certain
11:09:31 9 caregivers, defrauded her -- defrauded the company. Is
11:09:35 10 that essentially it?

11:09:38 11 MR. RAFALKO: Yes, that's absolutely
11:09:41 12 correct, Your Honor.

11:09:41 13 THE COURT: So what evidence do you have now
11:09:46 14 that would establish your case?

11:09:49 15 MR. RAFALKO: Certainly, Your Honor.

11:09:51 16 I think what probably sets this case apart
11:09:54 17 from other fraud cases over which the Court may have
11:09:58 18 presided is the fact that this was an investigation that
11:10:01 19 was conducted by the company over a truly protracted
11:10:05 20 period of time, more than a year in fact.

11:10:07 21 Over the course of that more than a year
11:10:09 22 period, there were multiple rounds of surveillance that
11:10:13 23 were obtained on both Mr. Lukashin, who is the lead
11:10:17 24 defendant in this case and was insured under
11:10:19 25 Transamerica's policy, and also on Ms. Faerman, who

11:10:23 1 purported to be the caregiver who was supposedly
11:10:27 2 providing care to Mr. Lukashin and charging him for
11:10:30 3 care, which was then being reimbursed by Transamerica.

11:10:33 4 In terms of having obtained the surveillance
11:10:37 5 video what was observed was the fact that Mr. Lukashin
11:10:40 6 was report -- and Ms. Faerman were reporting to
11:10:46 7 Transamerica that he was -- suffered from fairly severe
11:10:51 8 functional deficit and inability to perform his
11:10:54 9 activities of daily living.

11:10:56 10 What was observed on video, by contrast, was
11:11:00 11 completely the opposite of that, that in fact he was a
11:11:04 12 perfectly normal, functioning member of society with
11:11:08 13 absolutely no functional limitations whatsoever.

11:11:11 14 In addition to that, on multiple occasions
11:11:14 15 Mr. Lukashin was required to meet either with assessors
11:11:18 16 on behalf of the company who would come to periodically
11:11:23 17 re-assess him for benefits, essentially to determine
11:11:26 18 whether he had a continuing eligibility to receive
11:11:30 19 benefits. And in conjunction with those meetings,
11:11:33 20 Mr. Lukashin repeatedly and uniformly feigned an
11:11:36 21 inability to perform his activities of daily living,
11:11:40 22 which is the trigger for the policy, and then
11:11:42 23 immediately thereafter, as soon as the assessment would
11:11:45 24 conclude, would be observed on video behaving in a
11:11:49 25 manner that was completely different than what he had

11:11:51 1 just minutes before reported to the medical provider.

11:11:54 2 THE COURT: Can you define with more
11:11:59 3 specificity what the policies means activities and daily
11:12:10 4 living, and what was the observation of the -- of
11:12:21 5 Lukashin when these follow-up visit were made by
11:12:26 6 Transamerica and how -- how much time afterwards was he
11:12:33 7 observed acting differently. In other words, on the
11:12:37 8 video what is he observed doing and what did he claim
11:12:43 9 that he wasn't able to do?

11:12:47 10 MR. RAFALKO: Certainly, Your Honor.

11:12:49 11 So within the policy that is held by
11:12:52 12 Mr. Lukashin, there are six activities of daily living,
11:12:56 13 which I will define in just a moment. And in order to
11:13:00 14 trigger benefits, an insured has to be unable to perform
11:13:04 15 two of those activities of daily living without what's
11:13:09 16 called substantial assistance from a caregiver, which
11:13:12 17 means a caregiver that is either providing hands-on or
11:13:15 18 stand-by-care, somebody who has to be actually
11:13:17 19 physically touching or in the absolute immediate
11:13:20 20 vicinity of the insured.

11:13:21 21 The six activities of daily living are
11:13:24 22 bathing, cognizance, dressing, eating, toileting, and
11:13:28 23 transferring.

11:13:29 24 Mr. Lukashin consistently reported an
11:13:34 25 inability to perform at least four of those. And really

11:13:37 1 what the root of the claim was, was that he had had a
11:13:42 2 slip-and-fall at a grocery store some years prior which
11:13:46 3 resulted in a nondisplaced fracture of the wrist and
11:13:50 4 ankle, which should have healed quickly. But several
11:13:53 5 years after that event had taken place, he was still
11:13:57 6 reporting to Transamerica that he was unable to walk
11:13:59 7 without using a cane, without using a wrist brace and
11:14:04 8 with a severe limp.

11:14:06 9 I will represent to you that the only time
11:14:08 10 over approximately 30 or more dates of surveillance that
11:14:14 11 were obtained by the company throughout the course of
11:14:17 12 it's year-long investigation -- so we're talking about a
11:14:19 13 truly significant volume of surveillance here -- the
11:14:25 14 only time Mr. Lukashin was ever observed using a wrist
11:14:29 15 brace or a cane was on the one occasion when
11:14:32 16 Transamerica sent him, in accordance with its
11:14:35 17 contractual right under the policy, for an independent
11:14:36 18 medical examination with a doctor that's not affiliated
11:14:39 19 either with Transamerica or Mr. Lukashin.

11:14:41 20 On that occasion only, he was using braces,
11:14:47 21 purporting to walk with a limp and behaving in a manner
11:14:50 22 that would have been befitting someone who had a true
11:14:52 23 and legitimate need for care.

11:14:54 24 Of course, shortly thereafter, he was
11:14:57 25 observed taking his two dogs on a long walk up a steeply

11:15:03 1 inclined hill and engaging in a whole host of other
11:15:05 2 activities.

11:15:06 3 THE COURT: How shortly after that visit was
11:15:08 4 that observation made?

11:15:09 5 MR. RAFALKO: I'm sorry, Your Honor. What
11:15:10 6 was that?

11:15:11 7 THE COURT: How shortly after Lukashin
11:15:17 8 claimed in the visit that he wasn't able to walk was he
11:15:21 9 observed walking his dogs up the hill?

11:15:26 10 MR. RAFALKO: Either the very same day or
11:15:28 11 the very next day. But irrespective of which it was, in
11:15:32 12 each instance where the company obtained surveillance,
11:15:35 13 it would typically do five or seven days in a particular
11:15:39 14 stretch, and so you would have a consistent pattern
11:15:43 15 throughout the course of each surveillance period where
11:15:46 16 you would have Mr. Lukashin exhibiting no functional
11:15:50 17 limitation whatsoever, then going to a medical
11:15:52 18 appointment and feigning a functional limitation and
11:15:56 19 then immediately thereafter for some period of days
11:15:58 20 displaying the same conduct where he had no limitation
11:16:02 21 whatsoever.

11:16:03 22 THE COURT: What about the six factors that
11:16:08 23 you mentioned? This ambulatory function was only one of
11:16:16 24 them. Did you say that he had to show that he couldn't
11:16:21 25 perform two of the six?

11:16:24 1 MR. RAFALKO: That's correct, Your Honor.
11:16:26 2 The gist of this is you can extrapolate from other
11:16:32 3 movements that you witness him performing that he can do
11:16:35 4 other certain functions. So, for instance, so if
11:16:38 5 Mr. Lukashin were to claim that he can't use the toilet
11:16:41 6 because he can't get on and off of the commode and yet
11:16:45 7 we see him getting into and out of a car and driving the
11:16:48 8 car, which is essentially the exact same movement, then
11:16:52 9 you can say with a very high degree of certainly that
11:16:53 10 the representation that he cannot get on and off the
11:16:56 11 commode is in fact false.

11:16:58 12 THE COURT: What about some of the other
11:17:00 13 factors? Can you tell me how the evidence were to play
11:17:04 14 out in those regards?

11:17:08 15 MR. RAFALKO: Certainly, Your Honor. So
11:17:12 16 let's use dressing as another example. Mr. Lukashin
11:17:15 17 claimed that due to issues with his wrist and leg he was
11:17:17 18 unable to dress himself because he couldn't bend in a
11:17:19 19 way that would be befitting of being able to, for
11:17:23 20 instance, put on trousers or tie his shoes; yet we have
11:17:29 21 plenty of surveillance video of him, while he's out
11:17:31 22 walking his dogs, he's doing things like bending over to
11:17:34 23 tie his shoes, bending over to pick up items from the
11:17:35 24 ground such as dog do-do, for lack of a better way to
11:17:40 25 put that, and, you know, bending over at the waist and

11:17:45 1 engaging in a whole other host of movements that would
11:17:49 2 allow, you know, any reasonable person to say with a
11:17:52 3 high degree of certainty, you know, he could perform the
11:17:57 4 activity of daily living. Not to mention when he would
11:18:00 5 go, for instance, for a reassessment or for the IME that
11:18:03 6 I described a couple of minutes ago, you would see him
11:18:07 7 on video approaching those appointment, because
11:18:11 8 Transamerica conducted surveillance in conjunction with
11:18:14 9 the appointment itself, and you would see him, I mean,
11:18:18 10 purporting to limp in a way befitting somebody who can
11:18:21 11 hardly move, someone who could hardly even get out of a
11:18:25 12 chair, and then only a very short time later, either
11:18:29 13 later the same day or the very next day, you would see
11:18:32 14 him going on a long walk, walking his two dogs. I mean,
11:18:35 15 it's two observations that are so diametrically opposed
11:18:41 16 to one another that they couldn't possibly be
11:18:47 17 reconciled.

11:18:48 18 THE COURT: Let me switch topics for a
11:18:50 19 moment. When he made the claim with Transamerica, when
11:18:59 20 Lukashin made the claim, did he support it with
11:19:04 21 medical -- a medical letter or report, a doctor's
11:19:11 22 report?

11:19:13 23 MR. RAFALKO: So Transamerica obtained his
11:19:16 24 medical records out of the gate, I believe, which did
11:19:19 25 show the nondisplaced fracture that I mentioned at the

11:19:22 1 beginning. He did in fact at the beginning of his claim
11:19:25 2 period have a fracture. However, within a period of
11:19:29 3 about, oh, say, three months of that the fracture should
11:19:33 4 have healed sufficiently to the point where he would no
11:19:35 5 longer be eligible to receive benefits.

11:19:38 6 THE COURT: Well, is there any medical
11:19:40 7 evidence regarding whether the fracture -- was it just
11:19:46 8 in the wrist, or where else was it? Leg -- and leg and
11:19:49 9 wrist. Is there any medical evidence regarding the
11:19:57 10 healing process of the fracture?

11:20:01 11 MR. RAFALKO: Not that I have seen more
11:20:03 12 recently, Your Honor. There's nothing that I have seen
11:20:06 13 that would support the notion that the level of severity
11:20:11 14 or really anything approaching it that has been claimed
11:20:15 15 by Mr. Lukashin and observed on video is remotely
11:20:18 16 consistent with what we have seen.

11:20:21 17 THE COURT: How old a person is Lukashin?

11:20:26 18 MR. RAFALKO: I'm sorry?

11:20:27 19 THE COURT: How old is Lukashin?

11:20:30 20 MR. RAFALKO: Ms. Skylar would know better
11:20:33 21 than me. But my rough guess would be 71 or thereabouts.

11:20:37 22 THE COURT: And over how -- how long did
11:20:42 23 Transamerica make payments?

11:20:47 24 MR. RAFALKO: For a period of several years,
11:20:48 25 Your Honor. I don't have the exact date in front of me,

11:20:50 1 it was I want to say 2015, or so, onset of the claim.

11:20:57 2 THE COURT: When he went to these IMEs, were
11:21:02 3 those IMEs with doctors that Transamerica asked him to
11:21:06 4 visit or were those his own doctors?

11:21:10 5 MR. RAFALKO: So there were two separate
11:21:13 6 types, Your Honor. There's the IME, which is an
11:21:16 7 independent medical examination, that's with a doctor.
11:21:19 8 He also underwent a series of what are called
11:21:21 9 reassessments, which is a process that -- well, not to
11:21:26 10 get too granular, but because these are tax qualified,
11:21:30 11 what are called tax qualified policies, the federal
11:21:33 12 government requires that he be reassessed at least once
11:21:36 13 a year by an assessor, which is typically a nurse. And
11:21:40 14 in those instances, there would be a nurse as opposed to
11:21:42 15 a doctor, who would come to his home and conduct a whole
11:21:46 16 panel of inquiry and require him to do movements and
11:21:50 17 things like that that takes a number of hours at the
11:21:55 18 home.

11:21:58 19 THE COURT: And with regard to Faerman, the
11:22:04 20 caregiver, what is the evidence with regard to Faerman?

11:22:13 21 MR. RAFALKO: So Ms. Faerman was
11:22:15 22 consistently throughout most of the period of the claim
11:22:20 23 purporting to be Mr. Lukashin's caregiver and purporting
11:22:25 24 to sign forms that reported care that she allegedly
11:22:31 25 provided for Mr. Lukashin, and then making it so that

11:22:35 1 those forms would be submitted to Transamerica.

11:22:38 2 Ms. Faerman was -- so Transamerica conducted
11:22:44 3 surveillance on Ms. Faerman in addition to Mr. Lukashin,
11:22:48 4 and on no date, not even one date, among all of the
11:22:52 5 dates on which surveillance was performed, was she ever
11:22:55 6 observed providing care for Mr. Lukashin.

11:22:58 7 Moreover -- and this is probably even more
11:23:01 8 of what I would consider to be a smoking gun type of
11:23:06 9 observation, Your Honor -- there were a whole host of
11:23:09 10 dates on which Ms. Faerman and Mr. Lukashin weren't even
11:23:14 11 together at the same place. She was 30 miles away, and
11:23:20 12 yet not withstanding the fact that they never even
11:23:23 13 crossed paths or even came close to crossing paths on
11:23:27 14 any particular date, she would still complete forms that
11:23:31 15 she had provided seven or eight hours of care for
11:23:34 16 Mr. Lukashin, which would then be submitted to
11:23:36 17 Transamerica, which Transamerica would then pay.

11:23:40 18 THE COURT: And is Faerman a professional
11:23:44 19 caregiver?

11:23:47 20 MR. RAFALKO: I believe she is -- would be
11:23:49 21 considered to be an informal caregiver, although I don't
11:23:53 22 have information regarding her life insurer
11:23:58 23 certification to the extent she has that.

11:24:01 24 THE COURT: And was she employed by Golden
11:24:04 25 Age?

11:24:05 1 MR. RAFALKO: That's our understanding, Your
11:24:06 2 Honor.

11:24:07 3 THE COURT: And do you know of any
11:24:09 4 relationship between Faerman and Lukashin?

11:24:15 5 MR. RAFALKO: Well, Your Honor, I can give
11:24:17 6 you my informal take on that, which would be that the
11:24:22 7 two of them are friends or friendly, or possibly
11:24:27 8 involved in a romantic relationship. They are certainly
11:24:33 9 observed together on a fair number of dates. But as
11:24:36 10 stated on no date is she ever observed providing any
11:24:41 11 care to him. And on quite a few number of dates when
11:24:43 12 they submitted for care, she wasn't even in the same
11:24:46 13 place.

11:24:46 14 THE COURT: And has there been any criminal
11:24:55 15 investigation that involves these matters? I mean, is
11:25:00 16 your investigation an offshoot of a criminal
11:25:05 17 investigation?

11:25:06 18 MR. RAFALKO: Well, this is a situation
11:25:08 19 where there has been a fraud report that has been made
11:25:11 20 to the California Department of Insurance, and then from
11:25:17 21 there it is within their discretion, you know, what they
11:25:21 22 would do with the matter. And as of this date, I don't
11:25:25 23 know what, you know, where their process is.

11:25:31 24 THE COURT: And so your witnesses would be
11:25:35 25 any person who made observations through video or

11:25:43 1 otherwise, the IME doctors and/or nurses and the
11:25:56 2 documentary evidence, I mean, at least at this point?

11:25:58 3 MR. RAFALKO: That's correct, Your Honor. I
11:26:00 4 believe there would be certainly the four parties.
11:26:02 5 There would be the assessing nurses. There would be the
11:26:06 6 IME doctor. There would be the individuals who
11:26:08 7 performed the surveillance and -- well, the Court may be
11:26:12 8 headed in this direction. But I do believe there's the
11:26:15 9 possibility for two expert witnesses that we would be
11:26:19 10 considering, and I don't know what the other parties are
11:26:22 11 thinking in that respect.

11:26:23 12 THE COURT: I see. All right. Well, I'm
11:26:24 13 now going to ask each lawyer for the defendants to tell
11:26:30 14 me how they intend to defend the case.

11:26:35 15 So first of all, I will ask Ms. Skylar.

11:26:39 16 Well, who represents Lukashin, you,
11:26:41 17 Ms. Skylar?

11:26:43 18 MS. SKYLAR: Yes, Your Honor.

11:26:44 19 THE COURT: Would you take the lectern.

11:26:49 20 I mean, Transamerica has outlined its
11:26:52 21 position. What is your position, at least at this
11:26:55 22 point, going to be?

11:26:57 23 MS. SKYLAR: My client has suffered, and has
11:26:59 24 been continuously suffering to today, severe physical
11:27:03 25 and mental impairment.

11:27:06 1 Speaking of his wrist, he just had a surgery
11:27:10 2 that he was postponing because he had -- let me back up
11:27:15 3 a little bit. So my client actually initiated this
11:27:19 4 claim back in March of 2017, subsequent to his fall
11:27:24 5 which occurred in December of 2016. After that it's
11:27:33 6 correct he had suffered multiple fractures. And the
11:27:36 7 fracture that was referred earlier by plaintiff's
11:27:40 8 counsel, he just had a surgery to his hand because it --
11:27:43 9 it did not heal properly. And the reason why such a
11:27:48 10 long postponement of his surgical procedures that in
11:27:53 11 between he had at least four or five other urological
11:27:59 12 problems and procedures for which he's been constantly
11:28:02 13 treated and is part the reason why he was unable to
11:28:07 14 complete his activities daily living during that period
11:28:11 15 of time.

11:28:12 16 THE COURT: What type of urological
11:28:16 17 procedures did he have?

11:28:19 18 MS. SKYLAR: Mr. Lukashin, I believe, went
11:28:21 19 for simple hernia surgery -- hernia repair surgery,
11:28:26 20 which was not healing properly. He had severe pain
11:28:30 21 because of the nerve damage that was as the result of
11:28:34 22 that surgery.

11:28:36 23 In addition to that, he had it repaired on I
11:28:40 24 think two or three different occasions with multiple
11:28:44 25 surgeons, and as the result of that and severity, he

11:28:49 1 unfortunately had testicular removal as to complication
11:28:55 2 of his hernia. So that elevated to the level of his
11:29:00 3 disability.

11:29:01 4 THE COURT: Was this -- were these things
11:29:04 5 part of what was reported to Transamerica to support his
11:29:10 6 claim?

11:29:11 7 MS. SKYLAR: I was not involved in his claim
11:29:14 8 for his -- his pre-litigation claim. But my
11:29:21 9 understanding that all medical impairments were
11:29:24 10 disclosed to Transamerica to support his effect and
11:29:29 11 activities of daily living.

11:29:32 12 THE COURT: I see. All right. And what
11:29:34 13 about Mr. Voronin, you represent Faerman?

11:29:45 14 MR. VORONIN: No, Your Honor, I do not. As
11:29:47 15 far I know, Ms. Faerman has not been served yet and has
11:29:49 16 not appeared. I represent defendants Golden Age Home
11:29:53 17 Care and Robert Parkens.

11:29:55 18 THE COURT: I see. And what is your
11:29:56 19 position thus far?

11:29:58 20 MR. VORONIN: Well, Your Honor, going back
11:29:58 21 to what plaintiff's counsel said, it appears that their
11:30:01 22 evidence is video surveillance of Lukashin and of
11:30:04 23 Faerman. I represent neither of them.

11:30:06 24 There is no direct contractual relationship
11:30:09 25 between either Golden Age or Parkens and the plaintiff.

11:30:13 1 THE COURT: There's no contractual between
11:30:18 2 Golden Age and Faerman?

11:30:19 3 MR. GOLDMAN: No. Faerman was affiliated
11:30:21 4 with Golden Age.

11:30:22 5 THE COURT: And Golden Age is what type of
11:30:24 6 entity?

11:30:25 7 MR. VORONIN: Golden Age effectively is an
11:30:28 8 agency that pairs people requiring some level of basic
11:30:31 9 care with people who can provide that care.

11:30:35 10 THE COURT: And when that contact is made,
11:30:42 11 does the patient pay Golden Age who then pays Faerman,
11:30:51 12 or does the patient pay Faerman who then may turn over a
11:30:58 13 part of her fee to Golden Age? How does it operate?

11:31:03 14 MR. VORONIN: I'm not a hundred percent
11:31:05 15 certain at this time, Your Honor, but I believe that the
11:31:06 16 way that it works is that the beneficiary retains a
11:31:09 17 caregiver. Then the beneficiary pays the agency -- in
11:31:13 18 this case Golden Age. And Golden Age pays Faerman.

11:31:18 19 The exact sequence of which happens when I'm
11:31:23 20 not clear about. But that's the loop.

11:31:26 21 THE COURT: Thank you. All right. Let me
11:31:26 22 get back to you, Mr. Rafalko. Is what has been said by
11:31:39 23 the defendants known to you?

11:31:43 24 MR. RAFALKO: Well, I can say this, Your
11:31:46 25 Honor, I have not seen any of the medical records that

11:31:50 1 would support what Ms. Sklar said. I'm not saying that
11:31:56 2 the procedures she has referenced haven't taken place.
11:32:00 3 But I am saying I have not seen those records.

11:32:03 4 I'm also saying that notwithstanding the
11:32:05 5 possible fact that those may exist, you know, the fact
11:32:08 6 that Mr. Lukashin might have had a procedure is not
11:32:14 7 there on the issue of whether or not he can actually
11:32:17 8 perform his activities of daily living. And the fact is
11:32:20 9 that he and Ms. Faerman reported consistently that he
11:32:25 10 could not. And the video shows that he could perform
11:32:27 11 those activities.

11:32:28 12 THE COURT: But the essence or the basis for
11:32:31 13 the claim was the wrist and leg fracture, correct?

11:32:37 14 MR. RAFALKO: I'm sorry. The --

11:32:39 15 THE COURT: The basis of the original claim
11:32:42 16 was the wrist and leg fracture, correct?

11:32:47 17 MR. RAFALKO: Yes, sir.

11:32:48 18 THE COURT: And does -- do Transamerica's
11:32:55 19 records show that that claim was updated with the
11:33:00 20 information that Ms. Skylar related a few minutes ago?

11:33:06 21 MR. RAFALKO: I have not seen those records,
11:33:09 22 Your Honor.

11:33:10 23 THE COURT: And assuming that the claim was
11:33:20 24 not updated with that information, what would be your
11:33:29 25 position? In other words, if the original claim was

11:33:33 1 based upon the leg and wrist fracture, and your evidence
11:33:41 2 would allow a fact finder to conclude that that wasn't
11:33:52 3 the basis of his disability, could an insured such as
11:34:00 4 Lukashin offer this additional medical testimony to
11:34:06 5 support the payments even if that information had never
11:34:14 6 been transmitted to Transamerica prior to this lawsuit?

11:34:19 7 MR. RAFALKO: No, I don't believe that it
11:34:21 8 could, Your Honor, because the fact of the existence of
11:34:25 9 a medical condition or the existence of a particular
11:34:28 10 procedure is not the test for whether Mr. Lukashin would
11:34:33 11 be eligible to receive benefits under the policy.

11:34:36 12 Now, we certainly want to see those records.
11:34:38 13 And I'm sure, you know, Ms. Skylar would probably want
11:34:42 14 us to see them. But at the same time, the existence of
11:34:45 15 a particular medical condition has really no bearing on
11:34:48 16 whether or not the insured can actually perform an
11:34:54 17 activity of daily living, which is the test that's
11:34:55 18 appropriate under the policy.

11:34:56 19 THE COURT: I see. All right. I'm going to
11:34:58 20 set a trial date, and the parties can engage in whatever
11:35:03 21 discovery they think appropriate. The trial will be in
11:35:08 22 the middle of October.

11:35:11 23 What date would a Tuesday be there?

11:35:13 24 THE CLERK: That would be October the 22,
11:35:17 25 2019.

11:35:17 1 THE COURT: Yes. October 22, 2019, at
11:35:20 2 9 a.m., with a pretrial conference the Monday before.

11:35:25 3 THE CLERK: Yes, Your Honor. Just a moment,
11:35:27 4 please. You know, Your Honor, October 14th is a Monday
11:35:34 5 but it is a holiday. So I will make the pretrial on
11:35:37 6 October 7th.

11:35:38 7 THE COURT: Yes. October 7th is the
11:35:40 8 pretrial conference at 1:30.

11:35:47 9 And trial is October 20th -- which is it,
11:35:53 10 22nd?

11:35:54 11 THE CLERK: That's correct, Your Honor, at
11:35:55 12 9 a.m.

11:35:56 13 THE COURT: And either side can make a
11:35:58 14 dispositive motion at any time they deem appropriate.
11:36:08 15 The discovery cutoff will be at the end of August.

11:36:19 16 THE CLERK: That will be August 26, 2019.

11:36:22 17 THE COURT: All right. Thank you. Thank
11:36:23 18 you.

19 THE CLERK: All rise. Court is now
20 adjourned.

21 (PROCEEDINGS CONCLUDED.)
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3 CERTIFICATE OF REPORTER
45 COUNTY OF LOS ANGELES)
6) SS.
7 STATE OF CALIFORNIA)
89 I, SHERI S. KLEEGER, OFFICIAL COURT REPORTER, IN AND FOR
10 THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
11 DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT
12 TO SECTION 753, TITLE 28, UNITED STATES CODE, THE
13 FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE
14 STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE
15 ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE
16 FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE
17 JUDICIAL CONFERENCE OF THE UNITED STATES.
18
1920 DATE: NOVEMBER 4, 2019
2122 /S/ _____
2324 SHERI S. KLEEGER, CSR
25

FEDERAL OFFICIAL COURT REPORTER

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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am a resident of the County of Los Angeles, State of California. I am over the age of 18. My business address is 14011 Ventura Blvd., Suite 212w, Sherman Oaks, CA 91423.

On November 18, 2019, at Sherman Oaks, California, I served the foregoing documents described as

DECLARATION OF YURI VORONIN

electronically via the CM/ECF system. All parties on the Notice of Electronic Filing to receive electronic notice in this action via the CM/ECF system listed below have been served.

☒ Via email through ECF:

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DECLARATION OF YURI VORONIN

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4 [X] (FEDERAL) I declare that I am a member of the bar of this court.

5 I declare under penalty of perjury under the laws of the United States
6 that the foregoing is true and correct and that this declaration was executed on
November 18, 2019, at Sherman Oaks, California.

7
8 /s/ Yuri Voronin
Yuri Voronin

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DECLARATION OF YURI VORONIN